

Customer No. 35743

Attorney Docket No. 57637/01102

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants : Wedeking et al.

Serial No. : 09/752,867

Confirmation No. 3005

Filed : December 30, 2000

For : METAL COMPLEXES DERIVATIZED WITH  
FOLATE FOR USE IN DIAGNOSTIC  
AND THERAPEUTIC APPLICATIONS.

Group Art Unit : 1616

Examiner : Dameron L. Jones

Attention: Office of Petitions  
Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Attention: Office of Petitions, Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on:

Date:

12-22-03

Signature:

Carrie L. Caggiano

Renl. Ref: 03/10/2004 AXELLEY 0008073400  
FC: 9204  
Name/Number: 09752867  
\$1300.00 CR

**RENEWED PETITION TO WITHDRAW HOLDING OF ABANDONMENT/  
OR REVIVE APPLICATION FOR UNINTENTIONAL ABANDONMENT  
BASED ON FAILURE TO RECEIVE NOTICE OF ALLOWANCE**

Adjustment date: 03/10/2004 AXELLEY  
FC: 9204  
Name/Number: 09752867  
FC: 1453 Sir: 30.00 CR -1300.00 OP

Applicants hereby re-submit this Petition Under 37 CFR § 1.137 and MPEP § 711.03(c) to request withdrawal of the holding of abandonment of the above-identified application, and thus revive this application to enable the mailing of the Notice of Allowance (and any other documents such as Formal Drawing required, etc.) so that the issue fee and any other required tasks may be paid and completed.

12/29/2003 HVUONG1 00000016 500540 09752867

01 FC:1453 30.00 DA 1300.00 OP

A Notice of Abandonment was mailed on July 23, 2003 stating that the application was abandoned due to Applicants' failure to timely pay the issue fee.

In response, Applicants filed a Petition To Withdraw Holding Of Abandonment/Revive Application For Unintentional Abandonment ("Petition") on August 12, 2003. On December 5, 2003, Applicant's Petition was dismissed without prejudice to Applicants to file a renewed petition to provide evidence of non-receipt from Applicants' previous representatives.

As such, Applicants hereby concurrently submit the Declaration of Karen Elbing, Ph.D, attaching a docket record which confirms that a Notice of Allowance or any such related documents concurrently mailed was never received by Applicants' previous representatives.

Applicants also state that they have never received the original Notice of Allowance and Issue Fee Due. Applicants and Applicants' attorneys have conducted a thorough search of their application files and records. These searches confirm that the Notice of Allowance was never received. Thus, the entire delay in filing the required reply/issue fee from the due date for the reply/issue fee until the filing of a grantable petition pursuant to 37 C.F.R. 1.137(b) was unintentional.

Therefore, withdrawal of the Notice of Abandonment, and mailing of a new Notice of Allowance and Issue Fee Due (and any other appropriate documents), is respectfully requested.

A check in the amount of \$1300.00 is hereby submitted in connection with the filing of this Petition. If any additional fee(s) are required, the Commissioner is hereby authorized charge such fee(s) or credit any overpayment(s) to Deposit Account No. 50-0540.

A Revocation And Substitute Power of Attorney was submitted with the previous Petition and thus, is assumed to be entered and not needed with this submission.

Respectfully submitted,

Dated: December 22, 2003

By: 

Donald L. Rhoads, Reg. No. 34,705

Albert B. Chen, Reg. No. 41,667

Attorney for Applicants

KRAMER LEVIN NAFTALIS & FRANKEL LLP

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New York, New York 10022

(212) 715-9100 (telephone)

(212) 715-8000 (facsimile)



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants : Wedeking et al.  
Serial No. : 09/752,867 Confirmation No. 3005  
Filed : December 30, 2000  
For : METAL COMPLEXES DERIVATIZED WITH  
FOLATE FOR USE IN DIAGNOSTIC  
AND THERAPEUTIC APPLICATIONS.  
Group Art Unit : 1616  
Examiner : Dameron L. Jones

**DECLARATION OF KAREN ELBING, PH.D.**

RECEIVED  
DEC 30 2003  
OFFICE OF PETITIONS

I, Karen Elbing, declare as follows:

1. I am a partner with the law firm of Clark & Elbing, 101 Federal Street, Boston, MA 02110, and previously represented the Applicants in the prosecution of the above identified patent application before the United States Patent & Trademark Office.
2. I understand from communication with the current representatives for Applicants' instant application that a Notice of Abandonment was recently issued for failure to pay the issue fee, the timing of which was in turn based on a Notice of Allowance that had purportedly been sent to Clark & Elbing by the United States Patent & Trademark Office on March 19, 2003.
3. I hereby submit this Declaration to confirm that a Notice of Allowance and any other document concurrently sent (*i.e.*, Notice of Formal Drawings required, etc.) for this above identified case was never received at Clark & Elbing.
4. Attached as Exhibit A is a copy of the relevant page from our client status report (*i.e.*, docket record) dated April 8, 2003 which lists, *inter alia*, the "Next Action(s)" and the "Due Date(s)" for U.S.S.N. 09/752,867 (*i.e.*, the instant application).

5. As indicated by the circled area, there is nothing docketed in the Next Action(s) or Due Date(s) field for the instant application. If a Notice of Allowance (and any other concurrently sent documents) was received, an Issue Fee Payment item (and other appropriate action items) would have been docketed in the Next Action field with a Due Date of June 19, 2003. Thus, no such documents were ever received at Clark & Elbing.

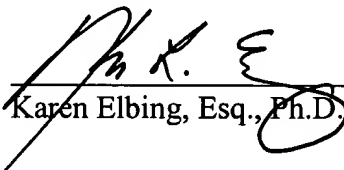
6. I further confirm that on April 14, 2003, the original file history for the instant application was forwarded to the Applicants' current representatives, and since we did not receive any Notice of Allowance (and any other concurrently sent documents), a search of the original file history jacket would also confirm that no such documents were ever received as well.

All statements made of my own knowledge are true and all statements made on information and belief are believed to be true. I make this declaration understanding that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. § 1001) and may jeopardize the validity of the applications or any patent issuing thereon.

Dated: December 17, 2003

Respectfully submitted,

By:

  
Karen Elbing, Esq., Ph.D.

# EXHIBIT A

Tuesday, April 08, 2003

Client: 50203

Bracco Diagnostics, Inc.

## Client Status Report

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Title	Matter Number Status	Application Number/Date	Patent No. Issue Date	Attorney(s)	Next Action(s)	Due Date(s)
METAL COMPLEXES DERIVATIZED WITH FOLATE FOR USE IN DIAGNOSTIC AND THERAPUTIC APPLICATIONS	50203-006 Granted	1 09/477,072 03-Jan-2000	6,221,334 24-Apr-2001	KLE SJE	LETTER TO CLIENT M-FEE PAYMENT	24-Apr-2004 24-Oct-2004
United States of America				SJE SJE	M-FEE PAYMENT W/SURCHARGE M-FEE STATEMENT LETTER TO CLIENT M-FEE PAYMENT M-FEE PAYMENT W/SURCHARGE M-FEE STATEMENT LETTER TO CLIENT M-FEE PAYMENT M-FEE PAYMENT W/SURCHARGE M-FEE STATEMENT	24-Apr-2005 24-Oct-2005 24-Apr-2008 24-Oct-2008 24-Apr-2009 24-Oct-2009 24-Apr-2012 24-Oct-2012 24-Apr-2013 24-Oct-2013
METAL COMPLEXES DERIVATIZED WITH FOLATE FOR USE IN DIAGNOSTIC AN THERAPUTIC APPLICATIONS	50203-006 Pending	2 09/752,867 30-Dec-2000		KLE SJE		
United States of America Client Ref. No. RA-70-DIV 1				SJE SJE		
MANUFACTURING PROCESS TO CONTROL PARTICLE SIZE	50203-007 Published	1 09/795,272 28-Feb-2001		KLE SJE RTA RTA	APPEAL BRIEF 3M EXT APPEAL BRIEF 4M EXT	04-May-2003 04-Jun-2003
United States of America Client Ref. No. RB-97						